No. 90-1624

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In The

Supreme Court of the United States

October Term, 1991

DANIEL-MARC AUGER, et al.,

Petitioners,

v.

ANTOINETTE TENEYCK, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT MEMBERS OF THE JUDICIARY OF THE STATE OF NEW JERSEY

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QUESTION PRESENTED

The District Court dismissed the complaint against the state defendants, all members of the New Jersey judiciary who had ruled on matters within their jurisdiction affecting petitioner Auger, under the doctrine of judicial immunity. The Third Circuit affirmed. Auger apparently accepts the validity of the judicial immunity doctrine in his petition, but challenges that doctrine's applicability where there is an allegation that private parties conspired with members of the state judiciary. Accordingly, since Auger limits his petition insofar as the state defendants are concerned to the applicability of judicial immunity where there is such an alleged conspiracy, the state defendants will only address the following question:

Does the allegation that private parties conspired with members of the state judiciary render the doctrine of judicial immunity inapplicable?

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The respondent members of the judiciary of the State of New Jersey respectfully request that this Court deny the petition for writ of *certiorari* seeking to review the judgment of the United States Court of Appeals for the Third Circuit found at Appendix A of the petition for *certiorari* filed by Raymond Auger in this matter.

ITERSTATEMENT OF THE CASE

COUN

The lower courts dismissed Auger's claims against all of the sta te judicial defendants based on judicial immunity. Au ger seems to accept the validity of this doctrine in his petition, but challenges its applicability in the present ca se because the state judicial defendants were allegedly y involved in a conspiracy with private parties to dep rive Auger of his constitutional rights. However, this court has already ruled that judicial immunity applies in such circumstances. *Dennis v. Sparks*, 449 U.S. 24 (1980). Therefore, *certiorari* is not warranted.

Due to the dismissal of this action prior to the initiation of pre-tri al discovery, the facts are based upon the pleadings. It appears that Auger and his former wife (defendant-Ar toinette Teneyck) had been involved in domestic and custody disputes as early as April 1983. Ultimately, these disputes culminated in a custody trial during the period of December 1985 through April 1986 wherein Antoinette Teneyck sought an order granting her custody of the r two children (PaE-26, ¶12). This proceeding apparently took place before the Honorable Martin Haines, J.S.C. (PaE-26, ¶14).

Various tr al, pre-trial and postjudgment motions, as well as petitio ns and applications were brought by both parties. Appa ently, the rulings on these various applications were ne ative towards Auger. Several of the postjudgment ap lications were resolved by defendants Superior Cou Judges Dominick Ferrelli, Anthony Tunney, Cornelius P. Sullivan and Myron H. Gottlieb. Auger then made s veral appellate applications which were

denied by the six named Appellate Division judges and the Chief Justice of the New Jersey Supreme Court.

Apparently dissatisfied with the results he was receiving in state court, Auger brought an action in federal court on behalf of himself and his two children on July 27, 1989 (PaE1). Generally, Auger alleged that the Teneycks, a court appointed expert, their attorneys, and that State Judiciary were involved in a conspiracy to deprive him of his constitutional rights (PaE1).

Among the complaints against the thirteen members of the judiciary of the State of New Jersey are that they participated in a conspiracy to deprive Auger of his constitutional rights based on decisions or acts that they performed in their judicial capacities. Judge Martin Haines allegedly violated Auger's constitutional rights by entering orders that determined the custody of his children and visitation rights and required Auger to attend family counseling (PaE24-33, ¶¶9-28). Judge Haines also allegedly entered orders requiring Auger to pay attorney's fees, and allegedly denied Auger's motion to restrain Steven Teneyck for interfering in parental matters (PaE41, ¶47). Finally, the complaint also alleged that Judge Haines refused to allow Auger rebuttal time in a motion that was being heard before him (PaE28, ¶17).

As to the claims against the other judges they were quite sparse. Judge Friedman presided over state proceedings where Auger brought an action against the Teneycks, their attorneys and Dr. Berson. It is not clear from the complaint how Judge Friedman allegedly violated Auger's rights. It was also alleged that Judge Ferrelli granted motions in favor of the Teneycks and assessed

attorney's fees against Auger (PaE42-44, ¶¶49-53). Judge Anthony Tunney allegedly refused to review the custody order entered by Judge Haines (PaE46, ¶58). Judge Cornelius Sullivan was charged with granting a restraining order in violation of Auger's constitutional rights (PaE21, ¶4). Judge Gottlieb was alleged to have denied an application for a restraining order made by Auger (PaE54, ¶69). Judges King, Brody, Ashbey, Coleman, D'Annunzio and Muir, all members of the Superior Court of New Jersey, Appellate Division, along with Chief Justice Robert Wilentz of the State Supreme Court, were alleged to have deprived Auger of his constitutional rights by ruling against him in applications he made in the appellate courts in the State of New Jersey during his custody battle and his subsequent civil suit (PaE47-58, ¶¶61-62; 71-72; 77).

As a result of this alleged conduct by the aforementioned state defendants, Auger contended that he had pled a valid cause of action against them based on numerous federal statutes including 42 U.S.C. §§1983, 1985 and 1986. He sought compensatory damages and an order vacating the numerous adverse rulings he had received in the state court proceedings (PaE56-60, ¶¶A-E). Motions were eventually filed pursuant to Fed.R.Civ.Pro. 12(b)(6) on behalf of all the state judiciary defendants, a municipal court judge, several attorneys and an orthodontist who were also named as defendants.

In an order dated April 6, 1990, the Honorable John C. Lifland, U.S.D.J., granted the respective defendants' motions to dismiss. Judge Lifland also, *sua sponte*, dismissed the case as to both Antoinette and Steven Teneyck as well as their attorneys Kenneth Domzalski and Brian

Guest (PaB19-20). Judge Lifland also allowed defendant Dr. Berson the opportunity to file an answer or otherwise plead out of time (PaB20).

With respect to the damage claim against the judicial defendants, Judge Lifland pointed out that all of the acts that the judges allegedly performed in furtherance of the conspiracy were clearly judicial acts performed within their jurisdiction, which entitled the judges to judicial immunity. The court explained that such immunity is absolute (PaB5-9). Judge Lifland also recognized that the equitable remedies that plaintiff was seeking against the judicial officers were to vacate the orders that they had entered in the state court proceedings. Judge Lifland concluded that such a claim had to be dismissed since the federal district courts had no jurisdiction to vacate state court orders (PaB9-10).

With respect to all the other defendants, the court reasoned that the gravamen of plaintiff's cause of action was based on 42 U.S.C. §1983. The court then concluded that the conduct of these individuals was not being performed under color of state law, a necessary requirement of a cause of action under §1983. Accordingly, Judge Lifland dismissed the case as to all the other defendants as well (PaB10-17).*

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* In his April 6, 1990 order, Judge Lifland provided Dr. Berson with the opportunity to answer or otherwise plead out of time. A motion to dismiss was filed on behalf of Dr. Berson. Judge Lifland then dismissed the case, concluding that Dr. Berson did not act under color of state law, a necessary requirement of a cause of action under 42 U.S.C. §1983 (Ra2-3).

Auger then filed an appeal with the Third Circuit Court of Appeals. The Third Circuit affirmed Judge Lifland's decision without opinion on November 26, 1990 (PaA1). A motion for rehearing filed by Auger was then denied on January 25, 1991, also without opinion. The present petition for writ of *certiorari* followed.

REASONS WHY THE PETITION SHOULD NOT BE GRANTED

THERE IS NO REASON TO GRANT CERTIORARI HERE AS TO ANY ISSUE INVOLVING THE MEMBERS OF THE STATE JUDICIARY BECAUSE THEY ARE ABSOLUTELY IMMUNE FROM SUIT FOR THE ACTIONS THEY TOOK CONCERNING AUGER.

This Court will grant a petition for a writ of *certiorari* "only when there are special and important reasons therefore." S.Ct.R. 10. Factors that are considered in determining whether or not such "special and important reasons" exist are: where a court of appeals decision conflicts with the decision of another court of appeals or a state court; or that decision departs from the accepted course of judicial proceedings; or where the court of appeals decided a question of such importance that it should be decided by the Supreme Court and has not previously been decided by the Supreme Court. S.Ct.R. 10.

In the present case, with respect to the state judiciary defendants, it is more than clear that none of these factors exist. The district court simply applied the doctrine of

judicial immunity to the damage claims against the judicial defendants in this case, which was clearly appropriate since all of the alleged conduct by the judicial defendants involved judicial acts within their jurisdiction.

Auger accepts the validity of the judicial immunity doctrine, but challenges its application in the present case because the state judicial defendants were allegedly involved in a conspiracy with private parties. However, judicial immunity has already been held applicable by this Court to situations where a judge has allegedly conspired with private parties to deprive a litigant of his constitutional rights. *Dennis v. Sparks*, 449 U.S. 24, 27 (1980). Therefore, *certiorari* should be denied because well-established precedent supports the application of judicial immunity to the state court judges who were defendants below for the judicial actions they took regarding Auger.

Few doctrines are more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction. *Pierson v. Ray*, 386 U.S. 547, 553-554 (1967). A judge is absolutely immune from liability for his judicial acts. *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); *Briscoe v. LaHue*, 460 U.S. 325, 334 (1983).

In *Pierson*, this Court held that this absolute immunity applies to suits brought under the Civil Rights Act of 1871, 42 U.S.C. §1983. Later cases have affirmed this principle. *See Stump*, 435 U.S. at 356; *Briscoe*, 460 U.S. at 344 and *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976). Moreover, this Court has consistently adhered to the rule

that judges defending against §1983 actions enjoy absolute immunity for acts performed in their judicial capacities. *Dennis*, 449 U.S. at 27.

The sole limitation upon judicial immunity is that two criterion must be met. First, the act complained of must be a judicial act. *Stump*, 435 U.S. at 360. Secondly, the judge must have jurisdiction over the subject matter before him at the time he acts. *Id.* at 356; *Dennis*, 449 U.S. at 29.

The acts complained of in the present case were clearly judicial acts, and it is also clear that all the members of the state judiciary were acting within their jurisdiction. Accordingly, the doctrine of judicial immunity is applicable to all the state judiciary defendants in the present case. Indeed, Auger concedes this point in his petition, where he states, "petitioner concedes that a suit would not lie against the judges because of the immunity which applies to their judicial acts." (Pb at 12, n.2).

However, Auger apparently attempts to circumvent the doctrine of judicial immunity by arguing that all of these members of the state judiciary "actively participated in the conspiracy" to deprive Auger of his constitutional rights (Pb at 12, n.2). Presumably, Auger is arguing that based upon this alleged conspiracy, the state court judges should be denied immunity. This argument has no merit and has already been rejected by this Court. *Dennis v. Sparks, supra.*

In *Dennis*, this Court addressed a factual scenario similar to the one in the present case in that a trial court judge was allegedly involved with private parties in a conspiracy to deprive litigants of their rights. In that case,

a Texas state court judge had entered an injunction which enjoined the production of minerals from certain oil fields. The injunction was dissolved by an appellate court. Subsequently, the enjoined parties brought an action in the United States District Court alleging a violation of their constitutional rights pursuant to 42 U.S.C. §1983. Their allegation was that the trial court judge was involved in a conspiracy with the parties bringing the action for an injunction to deprive the enjoined parties of their property rights without due process of law. This Court, in an opinion by Justice White, concluded that the lower courts were correct in granting judicial immunity to the state court judge. *Dennis*, 449 U.S. at 27. Justice White explained:

> Based on the doctrine expressed in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872), this Court has consistently adhered to the rule that judges defending against § 1983 actions enjoy absolute immunity from damages liability for acts performed in their judicial capacities. The courts below concluded that the judicial immunity doctrine required dismissal of the §1983 action against the judge who issued the challenged injunction, and as the case comes to us, the judge has been properly dismissed from the suit on the immunity grounds. [*Id.* (citations omitted)].

Thus, the fact that the state judicial defendants in this case were alleged to be members of a conspiracy to deprive plaintiff of his constitutional rights does not prohibit the application of the doctrine of judicial immunity.

In short, the lower courts in this case did nothing more than apply the well-settled doctrine of judicial

immunity to the facts of this case and properly dismissed all claims against the state judiciary defendants. The petition for *certiorari* should thus be denied insofar as it seeks review of this clear cut issue. To the extent that Auger's petition raises other issues, *certiorari* is not warranted on any matter relating to the state judicial defendants because their immunity from suit is absolute, consequently rendering review on any other issue as to them unnecessary and superfluous.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* should be denied as to the members of the judiciary of the State of New Jersey.

Respectfully submitted,

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Dated: August 26, 1991